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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81894; File No. SR-NYSEArca-2017-119]

October 18, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NYSE Arca Rule 1.1 and Rule 7.35-E to Make Technical and Conforming Updates in Connection with the Recent Merger of NYSE Arca Equities, Inc.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 5, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 1.1 and Rule 7.35-E to make technical and conforming updates in connection with the recent merger of NYSE Arca Equities, Inc. (“NYSE Arca Equities”) with and into the Exchange. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 1.1 (Definitions) and Rule 7.35-E(d)(4) (Auctions) to make technical and conforming updates in connection with the recent merger of its wholly-owned subsidiary NYSE Arca Equities, Inc. with and into the Exchange (the "Merger").

On June 2, 2017, the Exchange filed rule changes with the Securities and Exchange Commission ("Commission") in connection with the proposed Merger.<sup>4</sup> On August 15, 2017, the Exchange filed a partial amendment to such filing (as amended, the "Merger Filing").<sup>5</sup> On August 17, 2017, the Commission approved the proposed rule changes, as amended, and the Merger occurred on that same date.<sup>6</sup>

Prior to the Merger, NYSE Arca had two rulebooks: the NYSE Arca rules for its options market and the NYSE Arca Equities rules for its equities market. At the Merger, the NYSE Arca Equities rules were integrated into the NYSE Arca rules, so that there is now one NYSE Arca

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<sup>4</sup> See Securities Exchange Act Release No. 80929 (June 14, 2017), 82 FR 28157 (June 20, 2017) (SR-NYSEArca-2017-40) (Notice).

<sup>5</sup> See Partial Amendment 2 to SR-NYSEArca-2017-40 (August 15, 2017). The Amendment also was submitted to the Commission as a comment letter on the Original Filing. See letter from Martha Redding, Associate General Counsel, NYSE Group, to Brent J. Fields, Secretary, Commission (August 15, 2017), available at <https://www.sec.gov/comments/sr-nysearca-2017-40/nysearca201740-2221802-160732.pdf>.

<sup>6</sup> See Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40) (Approval Order).

rulebook.<sup>7</sup> In that process, NYSE Arca Rule 1.1 was amended to incorporate NYSE Arca Equities Rule 1.1 (Definitions), including by adding definitions from the NYSE Arca Equities rule that were unique to the equities market.<sup>8</sup>

However, due to an oversight, the Merger Filing did not incorporate the NYSE Arca Equities definitions for “NYSE Arca Book” or “UTP Security.” Accordingly, the Exchange proposes to make the following amendments to Rule 1.1:

- Add new Rule 1.1(jj) with the following definition of NYSE Arca Book: “The term ‘NYSE Arca Book’ refers to the NYSE Arca Marketplace’s electronic file of orders, which contains all orders entered on the NYSE Arca Marketplace.”<sup>9</sup>
- Add new Rule 1.1(iii) with the following definition of NYSE Arca Book: “The term ‘UTP Security’ means a security that is listed on a national securities exchange other than the Exchange and that trades on the NYSE Arca Marketplace pursuant to unlisted trading privileges.”<sup>10</sup>
- Renumber the other paragraphs in Rule 1.1 to reflect the addition of new paragraphs (jj) and (iii).

In addition, the Exchange proposes to amend Rule 7.35-E(d)(4) to update cross references to the definition of “Official Closing Price” in Rule 1.1.

Rule 7.35-E has a notice stating that an amended version of the rule has been approved

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<sup>7</sup> See id. at 40044.

<sup>8</sup> See id. at 40047.

<sup>9</sup> See Securities Exchange Act Release No. 79078 (October 11, 2016), 81 FR 71559 (October 17, 2016) (SR-NYSEArca-2016-135).

<sup>10</sup> See Securities Exchange Act Release No. 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (SR-NYSEArca-2015-58). See also Securities Exchange Act Release No. 76198 (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR-NYSEArca-2015-58).

but is not yet operative. The notice links to the amended version of the rule and the relevant approval order. Accordingly, the Exchange proposes to update the cross reference in the amended version of the rule. Exhibit 5B sets forth the proposed change to the amended but not yet operative version of the rule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>11</sup> in general, and with Section 6(b)(1)<sup>12</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed changes to Rule 1.1 would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because, by incorporating the definitions of NYSE Arca Book and UTP Security, the proposed change would correct the oversight of the definitions' omission and ensure that the changes made to Rule 1.1 to reflect the Merger were accurate and complete.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(1).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system in general, to protect investors and the public interest, because, by incorporating the definitions of NYSE Arca Book and UTP Security, the proposed change would ensure that the changes made to Rule 1.1 to reflect the Merger were accurate and complete, thereby reducing potential investor or market participant confusion.

Similarly, the Exchange believes that the non-substantive changes to Rule 1.1 to renumber the other paragraphs in Rule 1.1 to reflect the addition of new paragraphs (jj) and (iii) and to Rule 7.35-E(d)(4) to update the cross references would remove impediments to and perfect the mechanism of a free and open market and a national market system in general, to protect investors and the public interest, because such changes would add clarify [sic] and transparency to the Rules, ensuring that market participants can more easily navigate and understand the Exchange's rules and reducing potential market participant confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Exchange's rules to incorporate the definitions of NYSE Arca Book and UTP Security from the rules of NYSE Arca Equity [sic] in place prior to the Merger.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange indicates that the two definitions were omitted inadvertently from the Merger Filing and that waiver of the operative delay would ensure that the Exchange's rules include without delay the definitions of terms that are used elsewhere in the Exchange's rulebook.<sup>18</sup> The Commission believes that allowing the definitions to be incorporated into the NYSE Arca rulebook without delay would add clarity to the rulebook

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> Id.

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> See, e.g., Exchange Rules 1.1(ggg) (definition of Regulatory Halt), 7.11-E (Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility), 7.18-E (Halts), and 7.23-E (Obligations of Market Makers).

and would help reduce any investor or market participant confusion that otherwise could result. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>19</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-119 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2017-119. This file number should

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<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-119 and should be submitted on or before November 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Eduardo A. Aleman,  
Assistant Secretary.

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<sup>20</sup> 17 CFR 200.30-3(a)(12).



